



1/FW \$1772

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of) Examiner: W. WATKINS III
W. BAKKER, et al.)
Serial No.: 08/977,374) Art Unit: 1772
Filed: November 24, 1997) Confirmation: 3062
For: **DEVICE FOR HEAT**)
SHRINKING FILM ONTO)
AN OPEN-TOPPED)
CONTAINER)
Date of Office Action:)
March 7, 2005)
Attorney Docket No.:) Cleveland, OH 44114
PZNZ 2 00017-1) April 7, 2005

RESPONSE TO COMMUNICATION OF MARCH 7, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants have repeatedly asserted that once the patentability of the claims relative to the applied prior art is determined, the Applicants stand willing to file Terminal Disclaimers relative to the Applicants' own prior patents, if the Examiner still deems Terminal Disclaimers necessary.

The Applicants assert that Terminal Disclaimers are not necessary or appropriate relative to their own earlier patents. The Examiner has not established a *prima facie* case of obviousness between the claims of the earlier patents and the present claims. The Examiner has not shown motivation for the modifications, particularly since the proposed modifications change a principle of operation (MPEP § 2143.01).

Certificate of Mailing

I certify that this **RESPONSE TO COMMUNICATION OF MARCH 7, 2005** and **2 TERMINAL DISCLAIMERS** in connection with Ser. No. 08/977,375 are being
☒ deposited with the United States Postal Service as First Class mail under 37 C.F.R. § 1.8, addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date	Signature <i>Hilary M McNulty</i>
April 7, 2005	Printed Name Hilary M. McNULTY

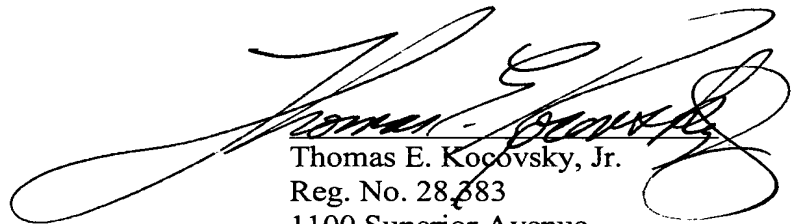
However, the requested Terminal Disclaimer is not actually terminally disclaiming anything. For purposes of calculating patent termination date, the present application and the Applicants' earlier patents all have a common filing date, *i.e.*, a common expiration date. Thus, the required Terminal Disclaimer is merely a requirement that all three patents remain commonly owned, something which the Applicants had every intention of doing with or without a formal commitment.

Without conceding the correctness of the Examiner's Double-Patenting Rejection and because the enclosed Terminal Disclaimers do not shorten the term of any patent issuing on this application, and because the cost of filing Terminal Disclaimers is less expensive than the cost of briefing the Examiner's Double-Patenting rejection, the applicants' are herewith filing appropriate Terminal Disclaimers.

Authorization is hereby provided to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 06-0308.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP

A large, stylized handwritten signature in black ink, which appears to read "Thomas E. Kocovsky, Jr.", is written over the printed name and address.

Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2518
(216) 861-5582